

FILED

JUN 15 1951

CHARLES CLARKE CROOK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 120

**GENE MITCHELL GRAY, LINCOLN ANDERSON
BLAKENEY, JOSEPH HUTCH PATTERSON, AND
JACK ALEXANDER,** *Appellants,*

vs.

**THE BOARD OF TRUSTEES OF THE UNIVERSITY
OF TENNESSEE, ETC., ET AL.**

**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

**STATEMENT BY APPELLEES OF GROUNDS IN OP-
POSITION TO APPELLATE JURISDICTION OF THE
SUPREME COURT OF THE UNITED STATES PUR-
SUANT TO SUPREME COURT RULE 12; AND MO-
TION TO DISMISS APPEAL.**

The appellees state the following matters and grounds against the jurisdiction of the Supreme Court of the United States, as asserted by the appellants herein in their statement of the basis of the appellate jurisdiction. filed herein

on the 7th day of May, 1951, as required by Rule 12 of the Supreme Court:

I

This case was not a proper case for the consideration of a three-judge court. In support of this contention, the appellees cite the following cases: *Ex Parte Bransford*, 310 U. S. 354; *Ex Parte Collins*, 277 U. S. 565; *Rescue Army v. Municipal Court*, 331 U. S. 549, 568-574. Consequently, no direct appeal lies to the Supreme Court under Title 28, United States Code, Sections 1253 and 2101(b). (See also the opinion of the District Court of three Judges for the Eastern District of Tennessee in this cause, filed on April 13, 1951, which has not yet been reported but a copy of which is attached as Appendix A to the appellants' statement and petition for the allowance of an appeal to the Supreme Court filed herein.)

II

The opinion of the District Court of three Judges for the Eastern District of Tennessee, filed on April 13, 1951, in this cause and the order entered pursuant thereto shows that the question involved in this case is the alleged unjust discrimination against the plaintiffs under the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States, and not the constitutionality of certain statutes of the State of Tennessee, or the order of the Board of Trustees of the University of Tennessee, referred to in the pleadings.

III

The pleadings in this cause show that the real question presented is whether or not the plaintiffs exhausted their administrative remedies as provided by Chapter 43 of the Public Acts of Tennessee of 1941, and hence no constitu-

tional question was presented for determination by a three-judge court. Accordingly, no direct appeal lies to the Supreme Court.

IV

The right of the plaintiffs to appeal is not to the Supreme Court but to the Court of Appeals for the Sixth Circuit.

V

The record discloses that the defendants prayed no appeal from the opinion and judgment of the District Court for the Eastern District of Tennessee, Northern Division, filed on April 20, 1951. Consequently, the questions sought to be presented by the plaintiffs in their application to appeal to the Supreme Court are now moot for the reason that said opinion and judgment of the District Court will become final prior to the filing of this record with the Supreme Court of the United States, entitling plaintiffs to the relief provided by said opinion and order of the District Court.

WHEREFORE, the appellees move the Court to dismiss the appellants' petition for the allowance of an appeal to the Supreme Court:

Dated: May 17, 1951.

Respectfully submitted,

K. HARLAN DODSON, JR.,

JOHN J. HOOKER,

By (S.) JOHN J. HOOKER,

Attorneys for Appellees.